Community Preservation Advisory Committee

November 25, 2002
9:00 – 2:00, State House Room 437
Meeting Summary

Attending:
Sen. Peter Mills (Chair), Skowhegan, Cornville
Rep. Ted Koffman (Chair), Bar Harbor, Southwest Harbor, Mt. Desert Island
Rep. David Tobin, Windham
Rep. Janet McLaughlin, Cape Elizabeth
Ed Suslovic, community development consultant and former Realtor
Peter Judkins, Maine State Housing Authority (Board) and Franklin Savings Administration
Jeff Sosnaud, Maine Audubon (Board) and Maine Small Business Alliance
Jim Brown, Director of Economic and Community Development, City of Presque Isle
David Holt, Town Manager, City of Norway
Beth Della Valle, State Planning Office
Mike Johnson, Maine Historic Preservation Commission

Absent Committee Members:
Sen. Lynn Bromley
Rep. Sue Hawes, Standish

Presenters to Committee:
Mary Ann Hayes, SPO – Taxation Policy (287-1009; maryann.hayes@state.me.us)
Dave Ledew, MRS – Taxation Policy (287-4787; david.p.ledew@state.me.us)

Presenters to Committee (continued):
Adam Krea, Treasurers Office – Taxation Policy (624-7479; adam.krea@state.me.us)
Kathy Fuller, MDOT – Transportation (624-3300; kathy.fuller@state.me.us)
Peter Merrill, MSHA – Affordable Housing (626-4608; pmerrill@mainehousing.org)
Mike Finnegan, MSHA – Affordable Housing (626-4600)
Alan Brigham, DECD – Housing and TIFs (624-9800; alan.brigham@state.me.us)
Beth Della Valle, SPO – Growth Caps, TDRs (287-2851; beth.dellavalle@state.me.us)
Bruce Hensler, SPO – Building and Rehab Code (287-5649; bruce.hensler@state.me.us)

Additional Attendees:
Liz Rettenmaier, SPO (committee staff)
Susan Johannesman, Office of Policy and Legal Analysis (committee staff)
Kristi Carlow, Treasurers Office
Sylvia Most, Town of Scarborough
Chris Hall, Maine Chamber of Commerce
Julie Jones, Office of Fiscal and Program Review
Kirsten Hebert, Maine Municipal Association
Tim Glidden, State Planning Office
Frank Miles, Maine Farmland Trust

Welcome & Introductions

Rep. Koffman welcomed committee members and additional participants to the meeting and reviewed the agenda for the day's meeting. Members of the Committee and other attendees introduced themselves. Liz Rettenmaier and Susan Johannesman introduced themselves and briefly described their roles in staffing the committee.

Tax Policy

Mary Ann Hayes of the State Planning Office introduced the tax policy discussion, outlining the primary challenge to the Committee: determining the appropriate angle on the tax policy discussion for the Community Preservation Advisory Committee within the context of the current number of tax policy reform discussions and proposals.

Dave Ledew of the Property Tax Division of the Maine Revenue Service (MRS) began with the state equalization process, and how money goes in and out of the state's coffers:

New assessors are given about 15 hours of training, which will be summarized today in about 15 minutes. Property tax is basically a local tax that provides revenue for local services. Unlike income and sales taxes, a municipality knows how much is going to be earned each year through the property tax – it is not dependent on the economy. Municipalities set the property tax rate to ensure that they raise the money that they need to fund their programs / budgeted costs.

Tax assessors neither raise nor appropriate taxes – annual town meetings and town councils determine the property tax burden through the in the budgeting process. The assessor distributes the tax burden determined by the town in a "fair and equitable" manner, as required by the state constitution. Assessors need to establish value on each piece of property with the same ratio to market price, this doesn't necessarily need to *equal* market price. For example, if residential property taxes are set at 80 percent of market value, every property needs to be assessed at 80 percent of fair market value.

The trend we are seeing is one of larger local dependence on property tax as a means for raising funds. Through the 1990s, the state had relatively flat property tax increases, and relatively flat valuation increases. In 1999, the current real estate market really started to take off, possibly due to investors funneling money out of the stock market and into real estate. The state began seeing big changes in selling prices and volume for sale, especially in southern Maine. This was especially noticeable in higher end properties perceived as investments (e.g., waterfront properties – not just ocean, but also lakes).

As a result, the MRS is seeing an increase in local valuation. Valuations were stable through the 1990s (seeing 2 to 4 percent increases). In the last couple years, valuations have been rising by 5, 8, or 11 percent statewide, particularly in waterfront properties.

Local assessors are forced to look at this through the "fair and equitable" lens. Without an increase in overall taxes, the burden would shift toward the increasingly expensive waterfront properties. But, since local expenditures (and therefore taxes) are going up overall, everybody is feeling it.

HANDOUT – 489 municipalities (towns, cities, and plantations), plus 12 unorganized territories (broken into regions by counties)

- *Question:* Is there any way of tracking increases in property values to income by locality?
    - *Response:* Can probably do it from Census numbers.

HANDOUT – What happens when values go up? If there is not increased local spending, tax rates will go down to have about the same amount of taxes per person.

HANDOUT – Tree Growth Primer. This exercise points out that any change in valuation scheme that gives one class of property owner a break will result in a shift to other property tax owners. In the state, we have 11 million acres in the tree growth program. The reality is, though, this type of program can have a significant local impact when the tax burden is shifted to other local taxpayers. The Legislature recognized this was an erosion of the tax base and put forth a reimbursement program to alleviate the burden on other taxpayers – the tree growth reimbursement formula is based on countrywide averages of undeveloped acreage value (usually higher than tree growth) to compute theoretical tax loss, reduced state valuation.

Adam Krea of the Treasurers Office presented a memo from State Treasurer Dale McCormick, which included the two Revenue Sharing (RS) funding formulas. Revenue Sharing I is intended to redistribute broad based taxes; it distributes funding to 493 entities (municipalities, unorganized territories, Indian townships, plus two Indian reservations). The population in the funding formulas are based on the Census and adjusted every year. The values in the formulas are not held static for the same year; the most recent of each of the numbers available is used (e.g., now using the 2000 population numbers, the 2001 tax assessment number, and the 2002 certified state valuation). RS I spits out a number, which is converted to a percentage of the total, and that is used throughout state formula. On the 20th of the month, the State will distribute 5.1 percent of the previous month's revenues (personal income, property, and sales tax from state revenues) into the local government fund. This information (the amount of distributions, percentages, etc.) is posted on the Treasurer's website: http://www.state.me.us/treasurer/revenue.htm.

Revenue Sharing II started in FY 2001. The purpose is a little more surgical than RS I: to provide a little more to 90 or so service center communities in the state. The formula decreases the property tax burden by .01 before multiplying by the population. By September 1st of any given fiscal year, a ceiling is calculated for RS I – after that RS II kicks in. In bad years, distributions will not even reach the ceiling, so no RSII funds will be distributed.

HANDOUT – RS comparison – if you had the same amt of money to distribute with RS I vs. RS II, this describes how the distribution changes. Right now, this is purely theoretical, this is if the system was changed to just be RS I or RS II, which is not the case.

Dave Ledew of the MRS returned to briefly describe three state tax relief programs.

- The Homestead Exemption has an easy application process; the municipal assessor can give an exemption of up to $7000 (if assessed at 100 percent of market value – the exemption is adjusted accordingly if the assessment is less than 100 percent of the fair market value) from the value of the property
    - In the last year or two, a lot of municipalities are taking greater pains to adjust their valuation base to be up above 90% so they can maximize the homestead exemptions possible.
    - Rural municipalities do valuations about every 10 years; more urban communities are updating their valuations more frequently so residents can take advantage of the homestead exemption.
    - The program started in 1998.
- The Circuit Breaker program has changed over the years; it establishes a household income threshold in order to qualify for a direct payment from the state if the property tax bill exceeds 4 percent of the income. The Circuit Breaker program has been in play in some shape or form since the 1970s.
    - Costs about $22 million or $23 million annually.
    - The income threshold was much higher in the 80s with a higher cap (now it's $1000 per payment).
- While the Elderly Deferred Program is on the books, it has been closed for applications since 1990. There are still about 25 homeowners in the program. The program was put in place in 1989. For homeowners 65 or older, with incomes less than $32,000, the state would pay property tax bills. The program began with 150 enrolled in the program. It was conceived as a rotating / self sustaining program after about 10 years. However, it only really operated for a year.

HANDOUT – Mary Ann Hayes of the State Planning Office provided a handout outlining how tax policies may influence locational decisions, how spending policies influence locational decisions, and some paths the CPAC might consider moving forward.

Committee Discussion:

- Peter Mills: I am most interested in better using what tools we currently have.
- Ed Suslovic: A recent Brookings Institution survey ranked Maine high on sprawl; sprawl was generally attributed it to over reliance on property tax and fragmented localities
- Peter Mills: There are a few things on the agenda already:

- School funding distribution. There is talk of changing current system, which average 2nd and 3rd years back of property values, to take average of more than just two years of valuation in order to provide more of a buffer over time to more rapid changes in valuation (e.g., 4).
  - Local options – e.g., local option sales tax, meals and lodging
  - Expanding the circuit breaker to higher income cutoffs and higher reimbursement levels – sometimes coupled with repealing the homestead exemption as a way to fund that.
  - Beefing up RS II, which is a more desirable way of distributing state dollars into high mil-rate communities
- Janet McLaughlin: The possible CPAC areas of tax reform recommendations (in Mary Ann Hayes' handout) are a good place to start.
- Peter Mills: We are heading into affordable housing, and can come back to specifics in the afternoon. One of the burdens we have is whether or not there is specific legislation we want to get behind in the short term.
- Ted Koffman: Here are some of the other thoughts:
  - Bring back the working waterfronts constitutional amendment;
  - Consider land banking, Doing more for farm preservation – e.g., the dairy industry;
  - Institute a capital gains tax on speculative lands sales / liquidation forestry – modeled after Vermont's tax;
  - *HANDOUT* – Muskie paper on tax policies;
  - Alter gas tax spending to allow investment in transit (operating funds);
  - Investigate how the tax system could create more exportability – distributing burden of property tax to those that are not here year-round? (e.g., differential tax on second homes).

Livable, Affordable Housing

Peter Merrill of the Maine State Housing Authority put the housing concerns of the state in context. Maine is facing more and more problems with affordable housing. One of southern Maine's MSA's is the 10th most unaffordable in the country – behind 9 in California.

The lack of a variety of housing types and prices leads to the disenfranchisement of trade and labor groups key to communities from entry into homeownership. This is especially a problem in the southern third of Maine and the coastal corridor.

HANDOUT – The livable, affordable housing bill introduced last year aimed to: create a standard for great American neighborhood, create a board that can pre-certify a design submitted for development, if approved, and limit community requirements for affordable housing so that it cannot require higher standards (in frontage, density). It would not apply where there is not a problem (as distinguished by labor market areas).

The definitions in the proposed bill included "affordable neighborhood development" – more middle-class than what is generally understood as "affordable", addressed requirements for sewer and water, and included definitions of common and internal open space.

The law would have created a state review board of 8 members. The board would review a development's plan and either accept it as a "precertified affordable neighborhood development" or reject it with an explanation. The proposed bill included design guidelines, directing the review board to adopt rules based on basic principles (walkable, choice of housing, different incomes, space, landscaping, environment, ongoing affordability)

When the bill was debated, the issue was local control vs. central planning. The Maine Municipal Association was strongly against the bill; it never got to the Senate. The bill was reviewed by the Natural Resources and Business and Economic Development committees and voted "ought to pass" (although the vote was not unanimous). An impressive coalition supported the bill –

including religious groups, women's' groups, environmental organizations – which was counterbalanced by MMA.

Committee and Audience Discussion:

- David Tobin: This is a great bill that ought to be restricted just to service centers. In Windham, we are getting ready to do a development that is denser than is proposed in this bill. It would be vetoed in a heartbeat if this had to be vetted by Augusta.
- Kirsten Hebert (MMA): The new policy committee will be seated in January, historically, though MMA constituents were not at all fond of having a centralized board that would leapfrog local authority. We have been using the templates and model ordinances from SPO for years, and would be more than willing to revisit those first, and to assist municipalities in implementing this approach. One of the primary concerns was removing local control over siting development and addressing the impact on transportation, safety, schools, and other local infrastructure.
- Peter Merrill: This bill would have impacted nine out of the thirty-five labor markets in the state; it would not be a burden on communities where this is not already a significant problem.
- Ted Koffman: In the activities of the community group MDI Tomorrow, affordable housing is a huge piece. Did municipal officials start this organization? No – it was started by businesses. Why haven't municipal leaders really come to this issue energetically?
- Kirsten Hebert: A regional approach is being addressed without this law. Communities in southern Maine are beginning to think about growth and higher density (e.g., putting density in one municipality and preserving open space in another). People are looking to the MMA legal staff for options to increase density. Matt Tupper is the contact for information on the group of eight southern Maine towns looking at issues regionally.
- Ed Suslovic: The City of Portland's City Council voted to support this bill, so at least one municipality supports it. Would this bill mean that a municipality couldn't stop a project – certainly not. Subdivision review is still required and if a community wanted to kill it, they could. In addition, he is not aware of any municipality other than Portland that allows more dense development than zoning permits, despite what comprehensive plans say. One additional thing we need to address is local requirements for roadways – that has a major impact on affordability
- David Holt: In our town, we would certainly be opposed to the state telling us how to site things. Community members are still upset about the state rejecting the comprehensive plan for our clustering proposal.
- Sylvia Most (Town of Scarborough Counselor): We are facing some of this with the Dunston Corner proposal; we are especially concerned with the issues of transportation.
- Ed Suslovic: However, without any affordability guidelines, a Dunston Corners type of development will not ultimately be affordable despite the density and smaller size – because of pent up market demand for this type of housing (e.g., Dunston Corners has no affordability component).
- Jeff Sosnaud: The density issue will affect sprawl and the cost of delivering services, impacting affordability… Can you connect the dots between density and affordability?
- Peter Merrill: The proposed bill had affordability requirements; the increased density makes it economically viable for the developer.
- Beth Della Valle: There is pent up demand for this type of community (the "Great American Neighborhood"). Thirty-eight percent of those surveyed in an SPO study said they would purchase this type of home if they could find one – but this type of housing has not been built since the 1960s. Where there is this type of housing, you're seeing increasing values because of steady and increased demand. Other states and localities have addressed this issue. In Massachusetts, if a municipality's local ordinances prevent low and moderate income housing from being built, the state can override. In Montgomery County, Maryland, every subdivision over 50 units has to have 25% priced at low- and moderate-income levels. These units are so well integrated that unless you

knew what you were looking for, you wouldn't pick those units out, preserving the value / profit for the developer for the "regular" unit. Market forces will conspire to make those upper end / not affordable unless there is some regulation / rule in place

- Mike Finnegan: When the Dunston Corner project came up, I was concerned about the lack of affordability in it. Although the proposal does not meet the MSHA affordable housing guidelines, some of the lower priced units are just above them, which is a great addition to the housing stock in that neighborhood. The road to an unaffordable housing hell is paved with good intentions and long discussions. I think we are going to get to a constructive intersection with MMA. I think as more communities recognize the need for affordable housing and address the problem locally, we will not need a bill like this – but we're not currently seeing this happen, which is leading to a crisis of affordability.
- Peter Mills: No municipality acting on its own is going to invite this type of development because of the increased school costs, without a corresponding big increase in property valuation and taxes collected. Who would want this type of development?
- Mike Finnegan: It has been demonstrated for every 1000 new jobs, you need 700 new housing units. If you want to grow from an economic development perspective, the workers need to live somewhere.
- Peter Mills: It's a little bit like shoreland zoning, it's not going to happen locally unless you change something big.
- Ed Suslovic: The reason why the Dunston Corners project, which includes 450 units of housing, commercial, and open space on 150 acres, does not include affordable housing is that the developers were told by some City Counselors: "if you include affordable housing (by MSHA / federal standards), it will be over my dead body." Voluntarily, municipalities are not going to address the affordable problem. When speaking regionally, everybody agrees the link between affordable housing and economic development is critical – and the affordable housing can all go in the next town over to support the commercial in our town. We're dreaming if we think a bill like this will suddenly result in these things being built – towns that want to stop it will, but this sets the tone, provides a model.
- David Holt: I have worked with towns for 26 years; most towns I have worked with actively pursued the development of low-income housing. The difference in geography between southern and northern Maine is significant, but I don't encourage you to assume that local officials don't care about low-income families. I'm not sure if some southern Maine communities want *any* growth – low income or high income. The difference in cost between rehab and new building (infill) are an issue to be addressed.
- Sylvia Most: There are at least two Counselors that would have been more in favor of the Dunston Corners project if there were an affordable housing component. This project is not facing local political pressure on the face of the financial picture (which is positive for the town), but on the risk associated with the project – will the state fund the transportation changes it promises; if more kids show up than were originally planned for, who will pay for that? Right now, the risk almost entirely falls to the municipalities, and almost all the municipalities cannot face that.
- David Tobin: Maybe Windham is an exception. We have developed several "Habitat for Humanity" houses, the town itself built some housing and made it affordable, we are planning to ensure that growth occurs in our growth area. Towns around Portland are under a tremendous amt of pressure – and all we hear on a regional basis is that we want the development in downtown Portland. This type of development is great. However, I cannot stand behind the State saying where it will be, regulating engineered community waste systems, etc.

Alan Brigham of the Department of Community and Economic Development explained the current law and rules guiding Tax Increment Financing (TIF) and how it works for residential development / affordable housing. The legislative intent for TIFs was to create new employment, and improve the tax base. It was designed to encourage commercial investment to offset housing development.

The need for TIFs comes from the limitation of municipalities to one source of revenues – property taxes, and how valuation is used to determine revenue sharing, school investment, and county taxes. Increases in valuation, arising from economic development, leads to loss of state subsidies and higher county taxes. Municipalities face becoming a net revenue loser. TIF is simply a mechanism for holding a town harmless for the loss of subsidies from economic development projects. It is not a gift; it is a “hold harmless” program. A municipality does not have to report to the state in its municipal tax records what is collected in a TIF.

The legislative finding says that jobs and broadening the tax base is a public service. If the municipality were to use TIF districts to support residential development, the public purpose is less clear – the statute does not support the social / public benefit of supporting affordable housing; it only mentions tax base and jobs.

Because of the sheltering effects the TIF creates, there are some limitations (because it’s avoiding the taxes / garnering the subsidies). Because one town’s use of TIF subjects the rest of the towns in Maine to an opportunity cost, there are limits on how it can be used: 25 percent of the area needs to be blighted, in need of rehab, or suitable for a commercial use; authorized project costs are fairly limited – capital costs for public use; directly related improvements; economic development projects.

DECD considered using TIF funding for housing projects, but it was unclear where the benefit would go: to the developer, the homeowner? Nothing worked. If TIF was used to support a 10-unit building of units of $100,000 each, if the mil rate was 20 mils, town would shelter $6600 (approx) from the state – their costs in local infrastructure to support that housing development would be much, much higher. DECD also considered using TIF benefit from a major commercial project to support low-income housing – but can’t do that with the same sheltering effect because the law directs the benefit to be used for economic development.

Committee and Audience Discussion:

- Ed Suslovic: The City of South Portland is working with a developer on a brownfields site to create high-end rental housing, a $1500 rental, gated community. This was done as a TIF under the “blighted area”, used for the environmental cleanup of a commercial property (because rental, not homeowner). I am interested in adding affordable housing as an allowable project cost
- Mike Finnegan: About 3 weeks ago, I went to 3 ribbon cuttings in Norway, York, and Munjoy Hill – $14 million in housing capital was created with a net economic impact between $40 and 50 million. Housing is vibrant in Maine right now. Think about the world in terms of community development: the lending industry is really talking about the synergy between economic and housing opportunities. To do these housing projects, you call on a multiplicity of sources – CDBG, TIFs, tax breaks, … TIFs are just one tool; other towns / states have addressed housing needs with TIFs. A housing TIF becomes an additional housing tool. I respect the challenges in the current statute, but we should be visionary in thinking about the future.
- Peter Mills: If we change the legislative language, this doesn’t mean towns will use it.
- Alan Brigham: This discussion is based on what is currently there; it can be changed.
- Janet McLaughlin: Where we go doesn’t even have to be a TIF – it can be something else. We’re not thinking creatively to community preservation, mixed use, and affordable housing.
- David Tobin: A lot of us to see statutes as ways of forcing communities into doing things they don’t otherwise want to do. Housing means more costs, higher valuation, less funding from the state for education…
- Mary Ann Hayes: TIFs are not necessarily a deal with a developer; some are just targeted areas
- Alan Brigham: The majority of TIFs are around a contract with a developer
- David Holt: Has anybody looked at the impact of TIFs on school funding?

- Alan Brigham: DECD has not; maybe MMA has? As long as the state funds education the way we do, you are not going to be able to get around this problem. The shelter from a TIF is fairly minor compared to the impact your new housing is actually having. There have been 179 TIFs created in Maine, over 150 remain active, all over Maine in all kinds of communities.
- Mike Finnegan: When people hear the term affordable housing, they think of really low income. Affordable housing also serves young single folks, senior citizens, those that will not create that impact on schools.
- Ed Suslovic: We need to keep an eye on the demographic trends. Public school enrollment in Maine is on the decline; we need to consider what we are going to be doing for our elderly.

NIMBY, Infill, and Growth Caps

Beth Della Valle of the State Planning Office presented a brief history of the growth caps bill that was before the last legislature (*HANDOUT*). SPO is seeing more growth caps, especially in southern Maine, but towns don't have guidance for when to use caps or even necessarily knowledge of what they are good for. Many towns, e.g., in York County, are not using growth caps as a meaningful planning tool, but because everybody around them does.

SPO asked for legislative guidance or direction to create rules on how SPO would review local growth caps, but did not get them from the legislature. As a stopgap approach, SPO is developing some guidance documents, but they won't have the same force.

SPO sees both good and bad reasons for growth caps. The Bill proposed last session includes some legitimate bases for implementing growth caps – e.g., temporary caps, as a way to direct growth away from rural area, as a means to deal with unforeseen impacts. SPO is opposed to the use of caps as a way of towns saying "we just don't want growth" – that attitude drives housing costs up, drives development to the next town over (or two or three over) – towns that aren't historically prepared to deal with the development. While those taxes are low at the moment, this will probably push it up pretty quickly.

Committee and Audience Discussion:

- Ed Suslovic: A lot depends on where you are in the state, but in the faster growing parts of the state, there are many examples of active growth caps, or towns adjoining growth cap towns considering growth caps. This is a critical community preservation issue. Growth caps by themselves do nothing to alter the pattern of development, just the pace of development. It just takes a while longer for it to happen… In fact, what we have found working with developers trying to build higher density developments – a growth cap is a significant barrier. Large housing projects are infrastructure-intensive – and expensive. If a project is projected to be 300 houses – and you need to build the infrastructure to support 300 houses – and local growth caps only permit 10 houses to be built a year to go with that infrastructure, it just can't be done financially. Commuting times in Maine are going up. In some sections of Maine, commuters are following the jobs, but in southern Maine, people having to move further out to afford housing to go with that job
- Beth Della Valle: Except for one, all the growth caps in place are town-wide caps, and they're all permanent caps. Durham has adopted a temporary cap, differentially between growth and rural areas – 30 units per year in the growth area, 15 in the rural area. There is no consistent methodology in developing the numbers in these caps. I have yet to find one growth cap that I find consistent with their comprehensive plan.
- Jeff Sosnaud: Growth caps are a pretty blunt instrument; why are people not looking to fine-tune these instruments more carefully? What's the motivating force?
- Beth Della Valle: It depends on what the local motivating force is for adopting a growth cap. If it is an anti-growth sentiment, a blunt instrument is good enough. Some towns

are working to address shortfalls in the state funding formulas – you're "punished" for more housing. Some formerly rural towns have been seeing the highest increases in housing are now facing the bills for that – schools, roads, government, planning. Differential caps have been discussed for the last dozen years, and it's just starting to happen. There is a little bit of a concern about legal right to do this – when towns don't see the explicit authority to do it, they get nervous about a challenge.

- Mike Finnegan: The case law on growth caps isn't completely defined. The Fair Housing Act has not been tested against Home Rule and a growth cap as being exclusionary for affordable housing within a community.
- David Tobin: Scarborough is building 200 new homes a year, a new HS addition. Windham has about 50 new homes a year. A lot of planning is in 20 year increments; if we suddenly got 200 homes a year, it would throw a lot of planning out the window.
- Ed Suslovic: It is a blunt instrument. I think one of the reasons towns go for it is because state fiscal policy leads it in that direction. The vast majority of growth caps I'm familiar with specify that age-restricted housing is exempt from the cap, yet if you want to build housing that can accommodate households with children, you're out of luck. Is that something we want to be encouraging in Maine? Municipalities do have impact fees available to them to assess the development with the costs of its impacts. Finally, I think Rep. Tobin's point is an important one. There are communities that do face unprecedented and unexpected impacts, and we had a "circuit breaker" type provision in the language at some point to give communities an "out" for two-years while the town could step back and plan? This Committee has the option to propose something; the Administration will not be proposing something this session. Without transfer of development rights, growth caps are a significantly blunt instrument – you face challenges of "taking" if you put a high cap on the growth area and a very low cap in the rural area – essentially taking the value of the rural land.
- Peter Mills: What is the current status of mobile home parks?
- Beth Della Valle: Each community must provide areas where mobile home parks may be sited. There are provisions for what is an acceptable site and allowing communities to have standards for "look and feel."
- Peter Merrill – I would be fired if I didn't point out the link between the mobile home law and the Great American Neighborhood bill.
- Ed Suslovic: I've heard that from school valuation, mobile home parks are the best you can do – lots of kids, low valuation development, but yet you still don't see them done.

Transportation

Kathy Fuller of the Maine Department of Transportation (DOT) introduced The "Transit Bonus." A new law was passed last year that allows Maine DOT to capture a piece of the highway funding and allow for a municipality that is already allowing some form of transit service to increase their contribution with a dollar-for-dollar match from MDOT. This is a brand new program; it has not been launched yet. Letters are going out to communities in the next couple of weeks, with the money to go out in the summer. Funding is coming from the Highway Fund (state dollars from fuel, excise taxes, fees). MDOT already supports operations, but this is the first time the Highway Fund has been used for something like this.

HANDOUT – This is a good beginning, and we'll know more about it as we use it. We're planning $200,000 in the first year, $300,000 in the 2nd year, and then go back to the legislature to talk about benefits / impacts. By MDOT's calculations, forty-seven communities will be eligible for the funding. The communities that are eligible are so because they are dense enough to allow transit to be developed and used. Towns that are spread out cannot support transit. One of the reasons we support Dunston Corners is that it allows densities that will be able to attract and sustain transit.

The department has not taken an active role in transit-oriented development projects, although we have been having discussions with interested developers over the years. We would certainly like to see more of it.

- *Question:* Looking at the problems, it is not a problem of running busses from the outlying communities into the center, but how they get around the center. People aren't going to give up their own auto when they get right to their office, if they would have to get to a central location and then take a cab.
  - *Response:* The Bonus program is looking to promote extension of services in an already dense and serviced area.

HANDOUT There has also been an internal dialogue regarding the creation of a new program related to Access Management. Two other key components of Access Management program (in addition to the newly promulgated rules and technical assistance) include acquisition of access rights on high-priority highways and development of incentives and alternatives for towns impacted by lack of access development rights (e.g., develop parallel routes / links between arterials).

The next MDOT budget has a small amt of funding to pilot these approaches – purchase of development rights and mixed-use frontage roads.

- *Question:* How do we pay for the acquisition rights? Maybe bonded and paid for with a small increase with the gas tax.
  - *Response:* This program will focus primarily on national highway system where posted speed is over 50 MPH. We can see today where congestion is being experienced and where it is going to be 20 years from now based on traffic counts and modeling.
- *Question:* The first mistake is paving the road. Most of it is residential curb cuts, one after another.
  - *Response:* In some areas, it's not just residential, but also commercial. Once the curb cut is there, it's hard to have them relocate or make adjustments based on a change of use.
- *Question:* Why has that development occurred in this sprawling, multiple curb-cut fashion? What are the local municipal ordinances regarding density? If you cannot allow density, what else can people do? The same night they were talking about the impacts of the traffic impacts of this walkable community (Dunston Corners in Scarborough), they were discussing an office park corridor where it was being boasted that you wouldn't be able to see one building from another.
  - *Response:* Another big change is that municipalities are no longer building local streets; only the state is building streets these days…

Committee and Audience Discussion:

- Beth Della Valle: Another reason those roads aren't being planned and built is the NIMBYism. In my community, there is a real paucity of roads, and every time anybody suggests connections, there is a flurry of pressure to not even address it.

- Ed Suslovic: The number-one challenge in building housing in Portland is traffic.

Building and Rehab Code

Bruce Hensler from the Maine State Planning Office addressed the issue of a statewide building and rehabilitation code. Code enforcement in Maine is a patchwork quilt of state, local, and federal regulations. Creating a one-code-fits-all approach was very difficult for the Maine Building Rehabilitation Code Advisory Council convened by Governor King last year.

- *Question:* Some work that NJ, MD, RI did to find some more streamlined approach to the rehab of existing / older buildings, often in our downtown, was the impetus for convening that

Council – New codes don't work very well for these older buildings. It's sad if we lose older buildings downtown because we can't really figure out how to save them.

  - *Response:* A team from NJ presented a great framework, but the Council rejected that. There is nobody in the state of Maine that takes complaints about codes, so a lot of that ends up on my desk.
- *Question:* Because there are two basic codes, is there any merit at all to having legislation that would say towns can pick Code A or Code B (as opposed to a uniform code)?
  - *Response:* Very simply, towns under home rule could develop any code they want to already; they could adopt Code A or Code B today. We come back to the problem of divergence with existing state legislation where there is not a match-up between state elevator or accessibility requirements and the federal guidelines without anybody to stand up for them.
- *Question:* What are the most common codes.
  - *Response:* There are two organizations, one is fire-oriented, one is building-oriented. The codes, dollar for dollar, are about equivalent. ICC (formerly BOCA) and NFPA (fire); it's a marketing issue.
- *Question:* How many of the 489 municipalities have a code?
  - *Response:* About 55% of communities are protected by a version of a code. Many of them adopt it, but don't update it, so some towns have codes that are 20 years old.
- *Question:* It seems like there is a convergence of interest, if not in a statewide rehab code, then in a model, in contractor licensing. We recognize that if you don't have a statewide building code, you can't have a statewide rehab code, or a licensed contractor. Before, there was no penalty if there was no agreement; there were almost incentives for the status quo. What if we put a deadline in – in 2 years, we will adopt this statewide code unless you do something else?
  - *Response:* The codes have to have a home. Right now, the only home is the Fire Marshal's office, if you want to do ICC, you will have to create another state agency to administer it. The 2nd highest number of consumer complaints in the state has to do with shoddy residential construction; 2nd only to the Lemon Law. The lack of licensing is a statewide concern. This was proposed last year, sent out for study. There was a proposal that would require any contractors doing work over $3000 to be licensed by the state of Maine and to follow a code; there would be a state Board to run the program… If that proposal went through, the contractors would be licensed to the standard of the international residential contracting code, which is one of ICC's codes…
- *Question:* So, you could have a contractor licensed by the state, legal by the local code, that doesn't meet the state code they are being held to?
  - *Response:* Yes.
- *Question:* What is the logic in having different codes in different towns? How is one town fundamentally different than others?
  - *Response:* "Maine is too diverse" – was the answer given to the Council. Maine is one of six states nationwide without a statewide building code. The insurance industry is likely to send their lobbyists up to this session to lobby for one…
- *Question:* A comprehensive building code would cover residential as well as everything else?
  - *Response:* It would make more sense to have a separate residential code, I believe. The Business and Economics Committee has jurisdiction. They had an interesting issue with the plumbing code last year… A building code would be separate from plumbing code, electrical code.

Rural Preservation Surrounding Growing Communities

Beth Della Valle of the State Planning Office presented background information on transfer of development rights (TDR) programs. *HANDOUT*. TDRs are not new; they're an attempt to even things out. The enabling legislation in Maine has been on the books for a long time, at least two municipalities have adopted them, but haven't used them. There are several TDR programs across the country. However, few have been used, and even fewer have worked very well – causing one to ask why.

There are some fundamental reasons:

- Setting up a TDR is not an easy thing to do. It is having the public get involved in the marketplace;
- You need a good sense of the business of things – setting prices and monitoring / adjusting them over time;
- The places where they have worked have been in hot real estate markets, where there is pressure; and
- You need ongoing local record-keeping, bureaucratic capacity.

With one or two notable exceptions, this just hasn't really worked very well at the local level. At the regional level, one of the earliest examples is also one of the most successful, Montgomery County, MD. In that case, you had a hot market, a well-off community, and a capable bureaucracy. NJ has a state TDR program – but it has never been used.

There is a distinction between purchase of development rights and development rights bank – Montgomery County has a purchase of development rights program – sellers and buyers interact directly, not through the use of an intermediary (selling to the county).

HANDOUT - Density Transfer Fee – Fee in lieu of TDR program. A density transfer fee is different than an impact fee, different than the negotiated process in Scarborough. Set infrastructure in town, though an ordinance, with a set of calculations and delineation between areas where increase in density was wanted and lower density was wanted. I don't know if this could be done on a regional basis. I'm not sure if this requires anything out of the legislature. What would probably be more useful is some technical assistance…

I think we need to dispel the notion that a statewide TDR would ever work. Anything that we would develop statewide would have to reflect regional sensibilities. While it may have a central administration, would have to be managed by regions (at the largest).

Committee and Audience Discussion:

- David Tobin: This is something we tried in the early 1990s, and couldn't figure out how to make it work. The density transfer fee looks like something we can use. The challenge to a TDR program was finding a willing seller and willing buyer at the same time. This density transfer fee looks like an option. I don't think Windham would be in favor of buying development rights in Gorham and building it up in Windham. We have a 2-acre lot minimum, which we are hoping to use as leverage to encourage density in our growth area in the future.

- Ed Suslovic: In Scarborough, we used several different formulas to get to the $1 million impact paid by the Dunston Corner developers – traffic impact, school enrollment, which the town will be using to further the town's preservation ideals ($ will go to the Scarborough land conservation trust). It is frustrating, though, that we cannot address impacts and move beyond town boundaries.

Next Steps:

Next meeting scheduled for **<u>December 9th – 9:30 – 2:00.</u>** This will be committee discussion – with cloture scheduled for December 20th, 2002, this is our shot to get our foot in the door.

- Taxes – incorporate CPAC short-term next steps from Mary Ann Hayes' handout as items of discussion as starting point. The paper from the Muskie student includes a piece on Vermont's Capital Gains on Speculative Sales policies.
- Look forward to strategizing as a committee to see which areas are the most important to follow up / discuss
- Still interested in looking at the Retroactive Moratoria Bill introduced last session bill that would make citizen initiatives on retroactive moratoria illegal (Ed Suslovic).
- One – two page summary of major items and rough proposals based on the 11/25 meeting, outlining issues to address, will be provided to members.

List of Handouts Distributed at the Meeting:

1. Agenda
2. Memo from State Treasurer Dale McCormick
3. Municipal Revenue Sharing Monthly Distribution, FY 95 – 03
4. Municipal Revenue Sharing Comparison between RS I and RS II
5. Property Taxation Handout, 1975 – 2001
6. 2001 Municipal Valuation Return Statistical Summary
7. What Happens When Local Values Go Up and Tree Growth Scenarios
8. Homeowners Guide to Property Tax in Maine
9. Chapter 908: Deferred Collection of Homestead Property Taxes
10. Comparison of Initiative Proposals Currently on File with Secretary of State (DRAFT)
11. How Tax and Spending Policies May Influence Locational Decisions and Possible CPAC Areas of Short Term Tax Reform Recommendations
12. Muskie Tax Policy Paper (DRAFT)
13. Affordable Housing Memo to CPAC
14. LD 2099: Regulation of Affordable Neighborhood Development as proposed
15. LD 2099: An Act to Revise the Definition of Affordable Housing as adopted
16. The Use of Tax Increment Financing for Affordable Housing
17. Chapter 206: Municipal Development Districts
18. Rate of Growth Ordinances Memo to CPAC
19. LD 2062: Rate of Growth Ordinances as proposed
20. LD 2062: An Act to Clarify the Use of Municipal Rate of Growth Ordinances as adopted
21. New Transit BONUS Payment Program (two handouts)
22. Highway Access Acquisition and Road Network Connectivity White Paper
23. Report on the Development of a Maine Building Rehabilitation Code Executive Summary
24. Transfer of Development Rights
25. Density Transfer Fee: A Fee in Lieu of a Transfer of Development Rights (TDR) Program